CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 94

MEMPHIS NATURAL GAS COMPANY, PETITIONER,

vs.

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION OF MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

PETITION FOR CERTIORARI FILED MAY 17, 1947.

CERTIORARI GRANTED JUNE 16, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No.

MEMPHIS NATURAL GAS COMPANY, PETITIONER,

vs.

A. H. STONE, CHAIRMAN, ETC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

No. 11664

MEMPHIS NATURAL GAS CO.

vs.

STATE TAX COMMISSION

First Day

PLEAS AND PROCEEDINGS—May 6, 1946

Pleas and Proceedings had and done at a regular term of the Circuit Court of the First Judicial District of Hinds County, Mississippi begun and held in the City of Jackson on the First Monday of May, 1946, being the Sixth day of May, A. D. 1946.

Present: Honorable H. B. Gillespie, Judge of the Seventh Circuit Court District of Mississippi and presiding Judge of this Court.

L. M. Gordon, Sheriff; H. T. Ashford, Jr., Circuit Clerk; E. A. Knight, Court Reporter.

M. B. 27—Page 24

[fol. 3] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Title omitted]

To the Honorable Judge of the Circuit Court of Hinds County, Mississippi:

APPEAL OF MEMPHIS NATURAL GAS COMPANY FOR ASSUMPTION OF JURISDICTION IN THE MATTER AND DETERMINATION OF THE FRANCHISE TAX LIABILITY OF THE MEMPHIS NATURAL GAS COMPANY—October 30, 1945

Pursuant to Paragraph 9328 of the 1942 Mississippi Code, the Memphis Natural Gas Company, a Delaware corporation with its general offices in Memphis, Tennessee,

appeals to this court for assumption by it of jurisdiction in the matter and determination of the franchise tax properly due. It is the contention of the Memphis Natural Gas Company that it is not liable for any franchise taxes to the State of Mississippi. The State Tax Commission on October 5, 1945, entered a final order adjudging that the Memphis Natural Gas Company is liable for franchise taxes as follows:

> For the year 1942 in the sum of $3,432.00 with statutory interest thereon from the due date;
> For the year 1943 in the sum of $3,466.50 with statutory interest thereon from due date;
> For the year 1944 in the sum of $3,415.50 with statutory interest thereon from the due date.

[fol. 4] A certified copy of said final order of October 5, 1945 is attached to this petition as Exhibit 1.

As shown by said order, the Memphis Natural Gas Company filed with the State Tax Commission on October 1, 1945 its petition for a review of the question of appellant's franchise tax liability to the State of Mississippi. Said petition so filed with the State Tax Commission sets forth the various reasons why the Memphis Natural Gas Company contends it is not liable for franchise taxes. A copy of said petition is attached hereto as Exhibit 2, and is made a part hereof by reference.

During the years in question petitioner has been engaged in Mississippi solely in interstate commerce and has not been domesticated or qualified as a foreign corporation with the right to do intrastate business, has had no agent for service of process during the years in question, and has not in any of said years maintained any offices in Mississippi and has had no employees or representatives therein other than those necessary to maintain the pipe line and related facilities, and has in no way sought the privilege of doing intrastate business and has not at any time engaged in intrastate business.

Petitioner's sole activity and business in Mississippi has been the maintenance and operation of that part of its interstate pipe line system within Mississippi. Said pipe line system originates at the Monroe Gas Field in the State of Louisiana, extends through the southeast corner of the State of Arkansas, crosses the Mississippi River at

Greenville, Mississippi and continues north through the State of Mississippi into the State of Tennessee at a point south of the corporate limits of the City of Memphis and thence to Jackson, Tennessee, which is the eastern terminus of the same.

Petitioner transports through this pipe line system natural gas for sale and delivery at wholesale to the Mississippi Power & Light Company, its sole customer in the [fol. 5] State of Mississippi, under a contract made without Mississippi. The Mississippi Power & Light Company takes the natural gas into its possession at various delivery points on and along appellant's pipe line system. The Mississippi Power & Light Company then distributes at retail the natural gas to its various customers. Appellant has no connection with or interest in the retailing and distribution thereof by the Mississippi Power & Light Company. All deliveries and sales by appellant to the Mississippi Power & Light Company are at wholesale. This business so conducted by appellant in Mississippi has repeatedly been held by the Supreme Court of the United States to be interstate commerce.

During the years in question appellant has paid to the State of Mississippi and the political subdicisions thereof all ad valorem taxes assessed against its properties within Mississippi.

For the numerous reasons set forth in Exhibit 2 to this petition it is the insistence of appellant that it is not liable for any franchise taxes, and the imposition of such a tax is an illegal exaction for the several reasons set forth in Exhibit 2 hereof, and particularly because the exaction of franchise taxes from appellant violates the Commerce Clause of the Federal Constitution and also other clauses of the Federal Constitution as more fully set forth in Exhibit 2 hereof.

In praying this appeal from the order of the State Tax Commission appellant relies upon each and every reason appearing in Exhibit 2 hereof to support appellant's insistence of nonliability for the taxes.

Premises considered, the Memphis Natural Gas Company, appellant, petitions this court for assumption of jurisdiction in the matter and determination of the franchise taxes properly due and as provided for in Paragraph 9328 of the 1942 Mississippi Code and the other statutory provisions relating to appeals of this nature.

[fol. 6] Appellant further petitions this court that an order be entered requiring the Secretary of the State Tax Commission, over his official seal and signature, to certify a transcript of the State Tax Commission record in this cause to the Clerk of this Court, and that the franchise tax liability of petitioner be revieoed by this court de novo.

At Memphis, Tennessee, this 30th day of October, 1945.

Memphis Natural Gas Company, By: H. L. Mann, President.

Edward P. Russell, Canada, Russell & Turner, 2910 Sterick Building, Memphis, Tennessee; B. L. Tighe, Jr., Standard Life Building, Jackson, Mississippi, Counsel for Memphis Natural Gas Company.

Duly sworn to by H. L. Mann. Jurat omitted in printing.

[fol. 7] Before the State Tax Commission of Mississippi

Order—October 5, 1945

The above styled cause came on for final consideration on this the 5th day of October, 1945, pursuant to orders adopted on August 24, 1945, August 30, 1945 and September 21, 1945.

It appears that in accord with the Order of this Commission adopted September 21, 1945, the said Memphis Natural Gas Company filed its petition for a review of the Franchise Tax assessed against it by the Commissioner, said petition being filed October 1, 1945.

It appears that the said Memphis Natural Gas Company has perfected its record showing its appeal from the decision of the Commissioner to the Commission, and the Commission having heretofore considered the matter and the evidence and argument of counsel and reached the conclusion that the said Company was liable for Franchise Tax for the said years in the amount as heretofore determined.

It, Is, Therefore Ordered And Adjudged, That the petition of the said Memphis Natural Gas Company for revision of Franchise Tax assessed against it by the Commissioner for the years 1942, 1943 and 1944 be and is hereby denied and over-ruled, and the decision of the Commissioner be

and is hereby sustained as to the liability of the said company for said Franchise Tax; and that the said Memphis Natural Gas Company be and is hereby adjudged to be liable for Franchise Tax for the year 1942 in the sum of [fol. 8] $3,432.00, for the year 1943 in the sum of $3,466.50, and for the year 1944 in the sum of $3,415.50, with statutory interest thereon from the respective due dates; and the decision of the Commissioner with respect to the liability of the said Company is hereby sustained, approved and confirmed; and the said Company is hereby assessed with the amounts herein set forth for the respective years.

Ordered and adjudged this the 5th day of October, 1945.

Secretary's Certificate to foregoing paper omitted in printing.

[fol. 9] BEFORE THE STATE TAX COMMISSION OF MISSISSIPPI

PETITION OF MEMPHIS NATURAL GAS COMPANY TO A. H. STONE, CHAIRMAN, STATE TAX COMMISSION AS FRANCHISE TAX COMMISSIONER, STATE OF MISSISSIPPI, FOR DETERMINATION OF FRANCHISE TAX LIABILITY OF MEMPHIS NATURAL GAS COMPANY FOR YEARS 1942, -43, -44, AND -45

Memphis Natural Gas Company, a Delaware corporation, but doing only an interstate business in Mississippi, herein called "Petitioner" or "Company", files this petition before the Franchise Commissioner of the State Tax Commission of the State of Mississippi, composed of the Honorable A. H. Stone, Chairman, Honorable M. C. Young, and Honorable J. E. Davis, Members, Honorable A. S. Coody, Secretary, and Honorable Greel L. Rice, Attorney General of the State of Mississippi, and for cause of relief, states:

I

That herein sought is a determination that the Petitioner is not taxable by the State of Mississippi under the Franchise Tax Act of 1934, Chapter 121, Laws of 1934, as amended, for the years 1942-1945, inclusive, for the following reasons:

(a) The legislature did not intend to hamper, burden or embarrass interstate commerce by making this statute ap-

plicable to a foreign corporation exclusively engaged in interstate commerce.

(b) If said statute does include such a corporation exclusively so engaged, then it violates:

(1) The Commerce Clause, Article I, Section VIII, of the Constitution of the United States:

(2) The Due Process Clause, Article XIV, Section 1, of the Amendments to the Constitution of the United States; and

(3) The equal Protection Clause, Article XIV, Section 1, of the Amendments to the Constitution of the United States.

II

Petitioner owns and operates a pipeline system originating at the Monroe Gas Field in the State of Louisiana. [fol. 10] Said pipeland system extends from Ouachita Parish, Louisiana, through the Southeast corner of the State of Arkansas, crosses the Mississippi River at Greenville, Mississippi, and continues North through the State of Mississippi into the State of Tennessee at a point South of the corporate limits of the City of Memphis, and thence to Jackson, Tennessee, which is the Eastern terminus of the same, a map whereof, as at February, 1942, is hereto annexed as Exhibit 1. The pipe line system was constructed to serve primarily the City of Memphis, Tennessee. The greater part of the gas transported through the system is delivered by Petitioner to its Tennessee customers, who purchase from Petitioner at wholesale several times the quantities of gas sold by Petitioner to the Mississippi Power & Light Company.

The Petitioner transports through this pipeline system natural gas for sale and delivery at wholesale to the Mississippi Power & Light Comapny, its sole customer in the State of Mississippi, under a contract made without Mississippi.

The Petitioner's sole business in Mississippi is that of selling at wholesale and delivering to the said Mississippi Power & Light Company its natural gas requirements, which said natural gas originates at the Monroe, Louisiana, gas field and moves in a direct and continuous flow from said source to the several delivery points in the State of Mis-

sissippi, where the gas delivered by Petitioner is measured by a thermometer and meter furnished by petitioner, which is the only way in which such gas can be measured. The pressure of the gas is reduced by the Petitioner before it passes into the Mississippi Power & Light Company's hands. The work done by the Petitioner is done upon the flowing gas to help deliver it and is an incident to interstate commerce between Louisiana, Arkansas, Mississippi and Tennessee. The Petitioner simply transports the gas and de-[fol. 11] livers it wholesale not otherwise worked over than to make it ready for delivery to the Mississippi Power & Light Company, which disposes of it by retail. Such deliveries to Mississippi Power & Light Company are made at points on Petitioner's pipe line shown by Exhibit 1. The Mississippi Power & Light Company transports the gas from the various delivery points to the municipalities named hereinafter, where the Mississippi Power & Light Company distributes and sells the same to its customers. The municipalities so served are: Clarksdale, Cleveland, Lake Cormorant, Lula, Lyons, Marigold, Robinsonville, Walls, Shelby, Tunica, Treenville, Greenwood, Indianola, Leland, Moorhead, and Paducah.

The transportation and delivery of the natural gas by Petitioner in Mississippi is a continuous movement and flow in interstate commerce.

The only business transacted by Petitioner in the State of Mississippi is exclusively interstate commerce and is not subject to the taxes here involved in this suit.

Mississippi Power & Light Company, after purchase of the natural gas from Petitioner and at wholesale, distributes the same through its pipelines to its various customers served by it. The Petitioner does not have any participation in or connection with the distribution of the gas, is not qualified in Mississippi to do a retail or intrastate business and has not come into Mississippi for this purpose. Its operations being confined solely to interstate commerce, its contracts made entirely out of this state, and not subject to jurisdiction of the Federal Power Commission.

III

For the years 1942-1945, inclusive, the years in which franchise taxes have been assessed against the Petitioner,

the said Petitioner avers that it was not and is not liable for [fol. 12] the payment of any franchises taxes to the State of Mississippi or any interest thereon, as the Petitioner during all of said years and at the present time has at all times been engaged solely in interstate business in the State of Mississippi, and at no time has engaged in any loval or intrastate business. The Mississippi Franchise tax, as construed by the Supreme Court of Mississippi is in reality an excise or privilege tax exacted of all doing business within the State of Mississippi.

Petitioner avers that during the said years involved in this suit, it cannot be held liable for Mississippi franchise taxes or interest thereon, because:

(a) Petitioner does no intrastate business in Mississippi and has done no intrastate business within the state, and is not doing business within the definition of doing business as set out in the Franchise Tax Act, which term "doing business" is defined in the Act to mean and include each and every act, power, or privilege exercised or enjoyed in this state, as an incident to, or by virtue of the power and privileges acquired by the nature of such organization. To carry on interstate commerce is not a franchise or a privilege granted by the state; it is a right which every citizen of the United States is entitled to exercise under the constitution and laws of the United States; and the accession and possession of mere corporate facilities, as a matter of convenience in carrying on their business, cannot have the effect of depriving it of such right, unless congress should see fit to interpose some contrary regulation. Your Petitioner obtains no protection from the State of Mississippi and acquires no powers or privileges in its interstate activity other than the protection afforded your Petitioner by virtue of the payment of an ad valorem tax on the property used by the Company wholly in interstate commerce.

[fol. 13] During the period involved Petitioner has not been domesticated or qualified as a foreign corporation with the right to do intrastate business, has no agent for service of process, has not maintained any offices in Mississippi and has had no employees or representatives therein other

than those necessary to maintain the pipe line and related facilities, and has in no way sought the privilege of doing intrastate business.

It was the plain legislative intent when the tax was applied on foreign corporations to tax such foreign corporations that came into the state, *qualified* under its laws, and employed such capital or its equivalent for which such organization would receive the benefit and protection of the government and laws of the state.

Your petitioner further avers that the Franchise Tax Act has been construed by the Courts of this state as well as the Courts of the United States that a foreign corporation formed for profit is doing business in Mississippi, and is subject to the Franchise Tax Act as soon as it gets ready to be active by having property there and *enjoying the Protection of the state for its, and qualifies formally by filing its Charter, naming its agent for services of process, and thereby qualifies its right to do business within the state.* Under this decision the Petitioner is receiving no additional protection from the government of this state other than the Protection received as a result of a payment of advalorem tax on this very same property; and therefore, does not fall within the provisions of Stone vs. Interstate Natural Gas Company, 103 F. (2nd) 544.

The State of Mississippi may not exact this franchise regulatory tax of the Petitioner for the right to do wholly and solely an interstate business within Mississippi, as [fol. 14] such a tax violates Article I, Section VIII, Constitution of the United States, that, "The Congress shall have power * * * To regulate commerce with foreign Nations, and among the several state-, * * *."

That the franchise tax attempted to be levied by the State of Mississippi is a regulatory tax in that it is applied based on the assessed value of the Petitioner's property, which property has borne an advalorem tax on exactly the same assessment. Such a tax based on the assessed value of the property is in effect a privilege tax charged on this property doing solely an interstate business and whihc licenses as a privilege tax the ownership of this property.

Since the passage by Congress of the Natural Gas Act in 1938, the Federal Power Commission has jurisdiction over Petitioner's rates, contracts, et cetera, as the Peti-

tioner is a corporation engaged solely in the business of transporting natural gas in interstate commerce.

The enfor-ement of the regulatory franchise tax against the Petitioner also violates Article XIV, Section 1, Amendments to the Constitution of the United States," • • • Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

IV

That the several amounts set out and claimed to be franchise taxes due from Petitioner for the years 1942 through 1945, was determined by the State Tax Commission based on the assessed value of the Company's property located within Mississippi, which method of determination is provided as a minimum alternative computation of franchise taxes by the Act; and Petitioner admits for the purposes of this Petition that the plan *af* assessing franchise taxes [fols. 15-16] by the Tax Commission is proper if any tax at all be due, but Petitioner makes these admissions without prejudice to its legal rights and reserves all rights which it may have under the law. Petitioner further avers that it is not liable for any franchise taxes to the State of Mississippi, but recognizes that if Petitioner is liable then the method of taxation adopted by the Tax Commission is in conformity with the Act, and such a computation produces a liability as asserted by the Tax Commission for the year 1942 $3,432.00, for the year 1943, $3,466.50, for the year 1944 $3,415.50, and for the year 1945 $3,441.00, with interest at the rate of 1% per month from and after the due date of each return, and has served upon this Pe*it*-ioner due demand therefor and demanded payment of said taxes in the aggregate amount as hereinbefore set out of $13,755.00 principal.

V

That at said assessment so thus assumed to be made, this Petitioner feels aggrieved for the reasons hereinbefore stated and, pursuant to its rights under the law, herewith file v th the Commissioner this Petition and Affidavit which sets forth the facts and requesting that the Commissioner

declare that the Petitioner be not liable for this tax in any amount.

That this Petition was filed in accordance with the Franchise Tax Act.

Respectfully, Memphis Natural Gas Company, By H. L. Mann, President.

Duly sworn to by H. L. Mann and A. C. Dearth; jurat omitted in printing.

(Here follows 1 Photolithograph, side folio 17)

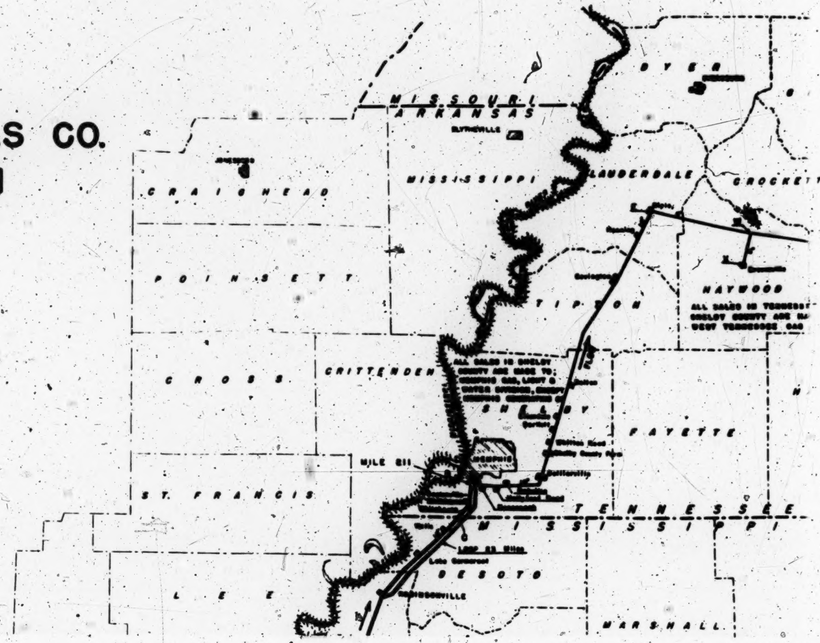
EXHIBIT 1 to PETITION

MEMPHIS NATURAL GAS CO.
PIPE LINE SYSTEM

REVISED FEB. 1942

SCALE 1:1,000,000

10 0 10 20 miles



LITTLE ROCK

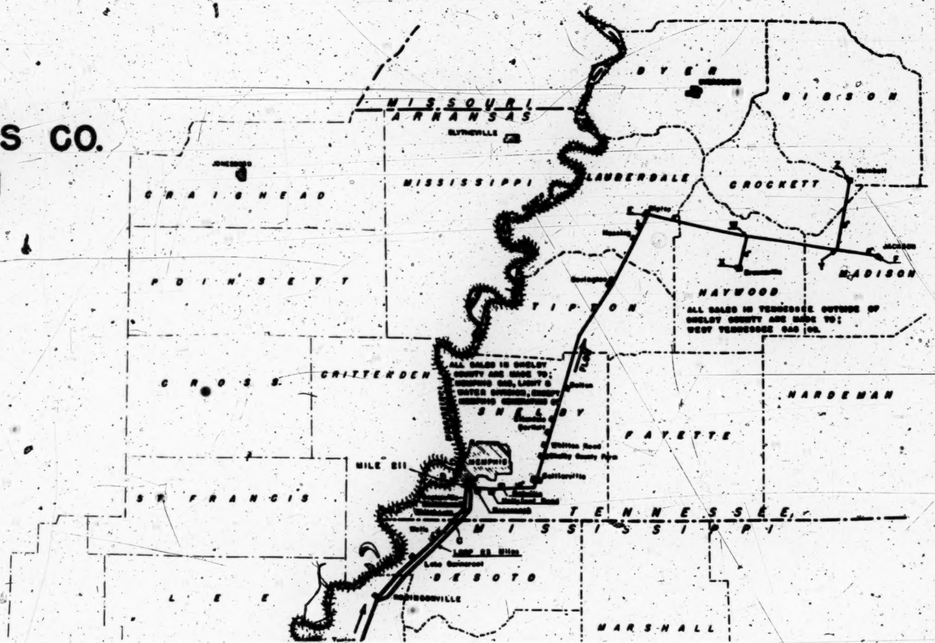
EXHIBIT 1 to PETITION

ATURAL GAS CO.
NE SYSTEM

D FEB. 1942

LE 1:1,000,000

0 10 20 miles



LITTLE ROCK

PINE BLUFF

ARKANSAS

ASHLEY

CHICOT

DESHA

DREW

LINCOLN

JEFFERSON

LEE

PHILLIPS

MONROE

ST. FRANCIS

CROSS

WOODRUFF

WHITE

PRAIRIE

LONOKE

JACKSON

CRITTENDEN

MISSISSIPPI

COAHOMA

BOLIVAR

TUNICA

TATE

DESOTO

MARSHALL

TENNESSEE

FAYETTE

SHELBY

HAR

QUITMAN

TALLAHACHIE

YALOBUSHA

GRENADA

LEFLORE

SUNFLOWER

CARROLL

MONTGOMERY

PANOLA

LAFAYETTE

MEMPHIS

MILE 211

LOOP 33 Miles

Lake Cormorant

HERNANDO

Tunica

LULA COMPRESSING STATION 5040 B.H.P.

MILE 135

Lyons

CLARKSDALE

LOOP 42.43 Miles

Shelby

Rosedale

Cleveland

MILE 93

DONGIT COMPRESSING STATION 5000 B.H.P.

LOOP 24 Mi.

Lake Village

GREENVILLE

Leland

Hollandale

Belzoni

Rolling Fork

Eden

Tchula

Durant

Winona

Duck Hill

Water Valley

Oxford

Batesville

Senatobia

Hernando

Whitton Road

Collierville

Germantown

Millington

Walls

Lake Cormorant

Tunica

Clarksdale

Shelby

Rosedale

Cleveland

Belzoni

Leland

Hollandale

Greenville

Lake Village

Eden

Tchula

Durant

Winona

Duck Hill

Water Valley

Oxford

Batesville

Senatobia

Hernando

Whitton Road

Collierville

Germantown

Millington

Walls

Greenwood

Indianola

Inverness

Moorhead

Sidon

Tchula

Durant

Winona

Duck Hill

Water Valley

Oxford

Batesville

Senatobia

Hernando

Whitton Road

Collierville

Germantown

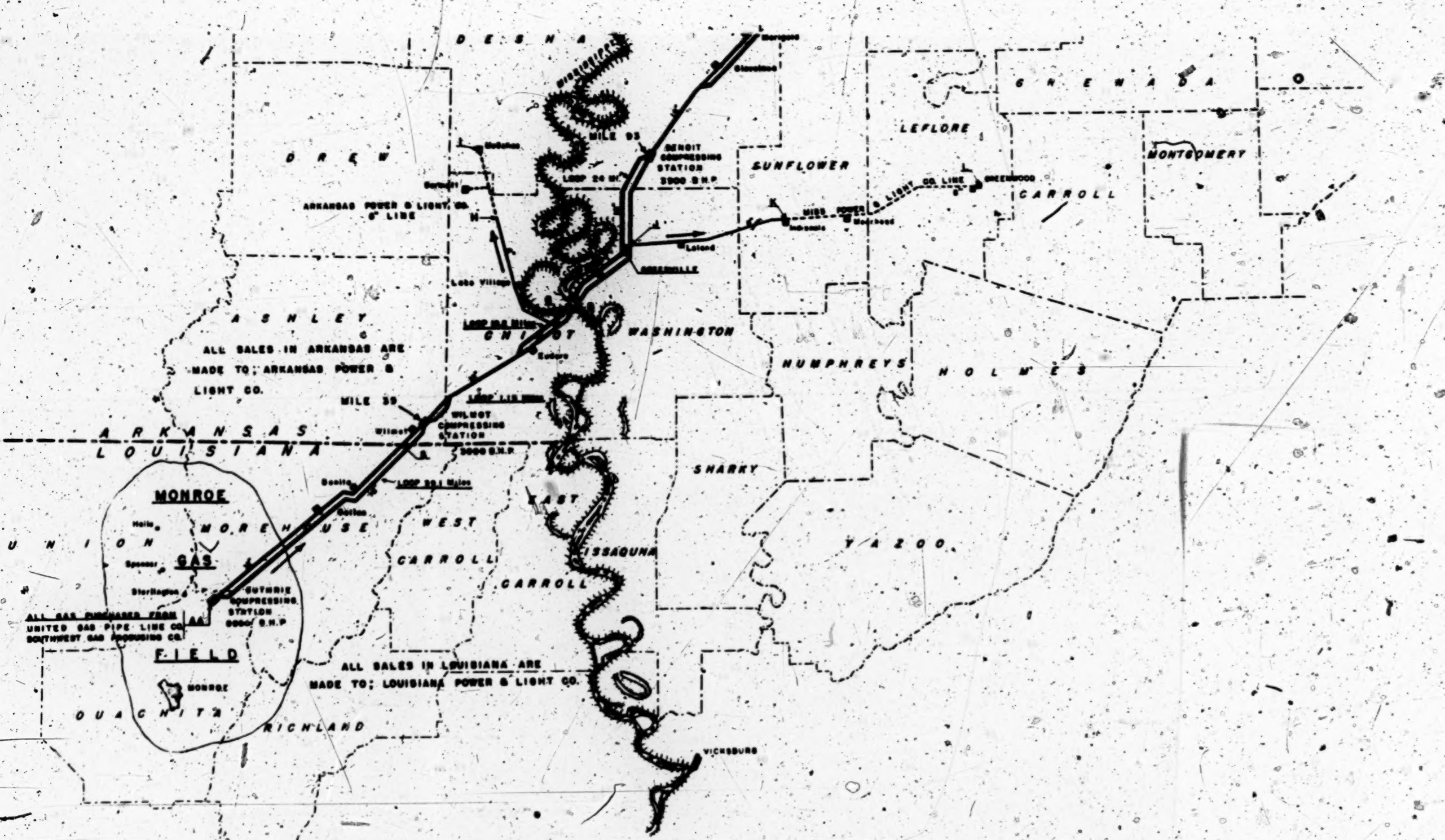
Millington

Walls

ARKANSAS POWER & LIGHT CO. LINE

MISS. POWER & LIGHT CO. LINE

ALL SALES IN MISSISSIPPI ARE MADE TO MISS. POWER & LIGHT CO.


DESHA
DREW
ASHLEY
CHICOT
ARKANSAS
LOUISIANA
MONROE
UNION
MOREHOUSE
OUACHITA
RICHLAND
WEST CARROLL
EAST CARROLL
WASHINGTON
SUNFLOWER
LEFLORE
GRENADA
MONTGOMERY
CARROLL
HUMPHREYS
HOLMES
SHARKY
YAZOO
ISSAQUENA
VICKSBURG
MILE 93
BENOIT COMPRESSING STATION 3000 B.H.P
LOOP 24 MI.
ARKANSAS POWER & LIGHT CO. 6" LINE
Lake Village
LOOP 19.8 MILES
MILE 39
WILMOT COMPRESSING STATION 3000 B.H.P
LOOP 13.5 Miles
GUTHRIE COMPRESSING STATION 3000 B.H.P
ALL SALES IN ARKANSAS ARE MADE TO; ARKANSAS POWER & LIGHT CO.
ALL GAS PURCHASED FROM UNITED GAS PIPE LINE CO. SOUTHWEST GAS PRODUCING CO.
GAS FIELD
ALL SALES IN LOUISIANA ARE MADE TO; LOUISIANA POWER & LIGHT CO.
MISS. POWER & LIGHT CO. LINE
GREENWOOD

[fols. 18-19] Cost Bond on Appeal for $250.00 approved and filed Nov. 1, 1945, omitted in printing.

[fol. 20] IN THE CIRCUIT COURT OF HINDS COUNTY MISSISSIPPI

[Title omitted]

STIPULATION—February 28, 1946

In the interest of brevity and to avoid the necessity of taking proof about facts which are not in dispute, it is stipulated between the parties:

1. The Memphis Natural Gas Company, through its President and Treasurer, executed on September 29, 1945 a petition addressed to the State Tax Commission which was filed on October 1, 1945 with the State Tax Commission and a copy of the same is Exhibit 2 to the petition in this cause for a review of the decision by the State Tax Commission holding the Memphis Natural Gas Company liable for franchise taxes.

2. That all of the facts stated in said petition are true and no proof of the same shall be required in this cause. The Stipulation that the facts are true shall be limited to the facts stated in the petition and the defendants shall not, by virtue of this stipulation, be considered or held to have agreed with any of the legal propositions and arguments made by the Memphis Natural Gas Company in said petition as the parties recognize that these legal questions and arguments are for determination by the Court.

3. That for the years 1942, 1943, 1944 and 1945 the Memphis Natural Gas Company paid ad valorem taxes in Mississippi as reflected by the statement made Exhibit 1 to this stipulation.

4. That the amount of taxes assessed by the State Tax Commission for the years 1942, 1943, and 1944, as shown [fol. 21] on the Order of the State Tax Commission and designated as Exhibit "1" to the petition, are computed on the proper basis, if the contention of the Tax Commission is correct as to liability of the petitioner for Franchise tax. And that the tax due for the year 1945 and subsequent

years, if any, should likewise be computed on the basis of the assessed value of the tangible property owned in Mississippi, so long as the sole business conducted in Mississippi by said petitioner is interstate commerce.

5. That the petitioner owns in its corporate capacity, tangible property consisting of pipe lines and other necessary facilities for transporting gas in the State of Mississippi, of the assessed values from year to year, as shown by the Exhibit to this stipulation, and that the basis of the demand on the petitioner for Franchise taxes for the several years involved is upon the assessed value of said tangible property owned and maintained in the State of Mississippi by the petitioner.

6. That this stipulation may be filed in this cause in lieu of evidence and for the purposes stated.

This 28th day of February, 1946.

Memphis Natural Gas Company, By: Edward P. Russell, By: B. L. Tighe, Jr., Its Attorneys.
State Tax Commission of Mississippi, et al., By: J. B. Sumrall, Its Attorney.

(Here follows Exhibit 1, side folio 22)

[fol. 22]

EXHIBIT 1 TO STIPULATION

ADVALOREM TAXES PAID IN STATE OF MISSISSIPPI

County	1942 Valuation	1942 Rate	1942 Tax Paid	1943 Valuation	1943 Rate	1943 Tax Paid	1944 Valuation	1944 Rate	1944 Tax Paid	1945 Valuation	1945 Rate	1945 Tax Paid
Desoto	212,800.00	4.2356	9,013.52	206,150.00	4.1493	8,553.93	206,150.00	4.5940	9,470.66	186,200.00	4.3848	8,164.66
Tunica	303,600.00	3.5213	10,690.74	288,250.00	3.3894	9,770.09	288,250.00	2.8299	8,157.24	264,400.00	3.3116	8,756.11
Coahoma	711,295.00	3.1119	22,135.46	697,030.00	3.3472	23,331.64	706,005.00	3.6871	26,031.60	695,910.00	3.8319	26,666.80
City of Clarksdale	12,000.00	2.0000	240.00	36,975.00	2.0000	739.50	40,550.00	2.0000	811.00	24,600.00	2.4000	590.40
Sunflower	14,400.00	6.3211	910.24	14,300.00	6.1030	872.73	14,300.00	5.9600	852.28	14,000.00	6.1220	857.09
City of Indianola	13,300.00	1.2250	162.93	13,300.00	1.2500	166.25	13,300.00	1.2500	166.25	13,300.00	1.4000	186.20
Bolivar	681,980.00	3.6385	24,814.38	669,495.00	3.7190	24,898.59	673,745.00	3.6868	24,839.67	622,845.00	3.5345	22,014.80
Washington	361,185.00	3.1830	11,496.53	351,280.00	3.2858	11,542.56	351,230.00	3.3372	11,721.32	485,715.00	3.4620	16,815.63
City of Greenville	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Back taxes—Jonestown C.W.S. 1934–1940 Inclusive	.....	.....	260.00	.....	.....	.....	.....	.....	.....	.....	.....	1,388.05
	2,310,560.00	3.4504	79,723.00	2,276,780.00	3.5082	79,875.29	2,293,530.00	3.5774	82,050.02	2,306,970.00	3.7035	85,439.74

[fol. 23] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Title omitted]

MOTION TO HEAR CAUSE IN VACATION—Filed May 24, 1946

Due to the heavy civil docket of this Court at the present term, it is agreed between the parties and their attorneys to move this Court for hearing of the above styled cause in vacation at a date to be mutually agreed upon between the Judge of this Court and the attorneys for both parties.

B. L. Tighe, Jr., Attorney.

[File endorsement omitted.]

[fol. 24] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Title omitted]

ORDER FOR HEARING IN VACATION

Motion having been filed in this cause for a hearing in vacation, and the matter having been considered by the Court, and being of the opinion that the same should be heard in vacation, it is, therefore, ordered that the above styled cause be heard in vacation at a date to be mutually agreed upon between the parties.

[fol. 25] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISS.

No. 11664

MEMPHIS NATURAL GAS COMPANY

vs.

STATE TAX COMMISSION OF MISSISSIPPI

JUDGMENT—July 8, 1946

This cause coming on to be heard this day, the same having been set for hearing in vacation inter-m time, as per order of the Court, on petition of the Memphis Natural

Gas Company, a Delaware Corporation, petitioning this Court to assume jurisdiction in this matter in the above styled cause, and to determine if this petitioner is due the State of Mississippi a franchise tax under the Franchise Tax Act of 1934, Chapter 121, Laws of 1934, as amended for the years 1942 to 1945, inclusive.

The Court considered a transcript of the record of the hearings before the State Tax Commission, consisting of the record made by the documents, petition, and records of the Commissioner and the minutes of the proceedings before the State Tax Commission and an agreed stipulation as to the facts in this cause, and all parties being present and represented by counsel, and the Court having heard the petition and considered the agreed stipulation as to facts, and being of the opinion that the said petitioner is not liable to the State of Mississippi for any franchise tax for the years 1942 through 1945 inclusive, and that the order of the Mississippi State Tax Commission made against the petitioner by the Commissioner, and approved by the Commission, was improper and should be held for naught;

It is, therefore, ordered and adjudged that the Memphis Natural Gas Company be not liable for franchise tax to the State of Mississippi for the years 1942— inclusive in any [fol. 26] amount, and that the returns exacted of said petitioner for these years were improper and invalid for the reasons given by this Court in its opinion that said petitioner, operating wholly and entirely in interstate commerce in the State of Mississippi, and not having qualified or domesticated, and seeking no franchise right or intrastate grant from the State, are hereby set aside and held for naught.

Let the costs be dismissed as to the petitioner.

Ordered and adjudged this 8th day of July, 1946.

H. B. Gillespie, Judge.

Approved as to form: State Tax Commission, By: J. H. Sumrall, Attorney. M. B. 27- Page 115 .

[fol. 27] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISS.

[Title omitted]

PETITION FOR APPEAL—Filed August 23, 1946

To the Honorable H. T. Ashford, Jr., Clerk, Circuit Court:

Whereas, on the 8th day of July 1946, a judgment was rendered in the above styled and numbered cause, whereby the petitioner, Memphis Natural Gas Company, was held to be not liable for Franchise Taxes alleged to be due to the State of Mississippi for the years 1942 through 1945, both inclusive; and

Whereas, A. H. Stone, as chairman of the State Tax Commission of Mississippi, and in said capacity representing the State of Mississippi, the real party in interest, feeling aggrieved at the rendering of said Judgment, and desiring to appeal said cause to the Supreme Court of Mississippi; and

Whereas, Section 1210 of the Code of 1942 provides that any officer of the State or any of its sub-divisions may appeal to the Supreme Court without the filing of a bond, said appeal being taken by the appellant in his official capacity as Chairman of the State Tax Commission, and therefore being entitled to an appeal with supersedeas without the filing of a bond;

Now, therefore, your petitioner, said A. H. Stone, Chairman of the State Tax Commission, hereby petitions your Honor for an appeal to the Supreme Court of Mississippi, and requests that the record consisting of a transcript of the proceedings before the State Tax Commission, the Petition of the said Memphis Natural Gas Company, and the stipulation entered into and filed among the papers in said cause, and the judgment of the Court be transcribed and forwarded to the Clerk of the Supreme Court of Mississippi as the record in said cause for the purpose of appeal ac-

[fol. 28] cording to law.

You are further hereby petitioned to make such notation upon the record as will indicate that the appeal is granted with supersedeas.

Respectfully Submitted, this the 22nd day of August, A. D., 1946.

J. H. Sumrall, Attorney for the Appellant.

[File endorsement omitted.]

[fol. 29] Clerk's Certificate to foregoing transcript and Bill of Costs omitted in printing.

[fol. 30] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERRORS—Filed January 15, 1947

It is respectfully submitted that in the trial of this cause in the lower court, the court committed the following errors, to-wit:

First, by holding that under the law that the appellee, the Memphis Natural Gas Company, was not liable for the franchise tax assessed.

Second, the lower court erred in holding that because the Memphis Natural Gas Company had by an attempted withdrawal from the State of Mississippi, surrendered its authority to do an intra-state business, and therefore was not liable for the franchise tax imposed, simply because it no longer claimed the right to do an intra-state business.

Third, the lower court erred in holding that the owning and using tangible personal property and real estate in the State of Mississippi did not render said company liable for the tax imposed by the franchise tax law upon the right to own and use tangible property in the State of Mississippi, under the protection of the laws and government of the State.

Respectfully submitted (S.) J. H. Sumrall, Attorney for Appellant.

This the 16th day of January A. D. 1947.

[fol. 31] CERTIFICATE

I, J. H. Sumrall, Attorney of Record for the appellant, do hereby certify that I have this date mailed to the proper post office addresses, with sufficient postage attached thereto, true copies of this Assignment of Errors to Hon. Bernard L. Tighe, Jr., Attorney, Jackson, Mississippi, and Hon. E. P. Russell, Attorney, Memphis, Tennessee, Attorneys of Record for the appellee.

This 16th day of January A. D. 1947.

(S.) J. H. Sumrall, Attorney for the Appellant.

[fol. 32] IN THE SUPREME COURT OF MISSISSIPPI

15963 In Banc

A. H. STONE, Chairman,

v.

MEMPHIS NATURAL GAS COMPANY

OPINION—February 24, 1947

GRIFFITH, J.:

Appellee, a Delaware corporation, owns and operates a natural gas pipe line running from the Monroe gas field in Louisiana to Memphis in the State of Tennessee, and beyond. The pipe line enters Mississippi at a point a few miles south of Greenville, and runs thence, in this State, towards the north in a general direction parallel with the Mississippi River, and enters Tennessee at a point almost directly south of Memphis. The map of line, made a part of the record, shows that there are approximately 135 miles of it in this State, and that the system includes two compressing stations at points in this State.

There is a stipulation in the record covering the further facts, and these are that appellee company is not, and has not been, engaged in any intrastate commerce in Mississippi, but that its business, so far as concerns this State, has been interstate solely and exclusively; that it has only one customer in the State, and to this customer it delivers gas wholesale, under a contract made in another state; that appellee company has not been domesticated or qualified [fol. 33] as a foreign corporation with the right to do intra-

state business; has no agent for service of process and has not had any such agent, and has maintained no office, in this State; and that it has no employes or representatives in this State other than those necessary to maintain the pipe line and its related facilities.

The State, through its Tax Commission, has demanded of appellee company the payment of the corporation franchise tax imposed under Secs. 9312-9340, Code 1942, for the years 1942, 1943 and 1944, and has entered its order adjudging appellee liable therefor, from which order appellee, under Sec. 9328, has appealed for a review by the courts, contending that inasmuch as appellee does no intrastate business whatever in Mississippi, and is not qualified to do any intrastate business therein, no tax of any kind can be levied by the State against it other than the ad valorem taxes which it has always fully paid—that any other tax, and particularly a franchise tax, would be to tax interstate commerce.

The franchise tax here sought to be collected by the State is not a tax upon "doing business" as that term is ordinarily understood in the purely commercial sense, but is that which is defined in the statute Secs. 9312 and 9314, as follows: "When the term 'doing business' is used in this Act, it shall mean and include each and every act, power or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges acquired by the nature of such organization, whether the form of existence be corporate, associate, joint stock company or common law trust."

It is to be seen that there is no attempt to tax interstate commerce as such, but the levy is an exaction which the State requires as a recompense for its protection of lawful [fol. 34] activities carried on in this State by the corporation, foreign or domestic, activities which are incidental to the powers and privileges possessed by it by the nature of its organization—here the local activities in maintaining, keeping in repair, and otherwise in manning the facilities of the system throughout the 135 miles of its line in this State.

This statutory definition was first approved in the connection here involved as within the power of the State in Stone v. International Natural Gas Co., 103 Fed. (2nd) 544, affirmed 308 U. S. 522. Subsequently, in a connection equally pertinent in principle, it was approved and sus-

tained by this Court in Stone v. General Contract Purchase Corp., 193 Miss. 301, 312, and in Stone v. General Electric Contracts Corp., 193 Miss. 317; it being further held in the latter case that when the incidental local activities come within the definition, it would be immaterial that the foreign corporation had no local agents, and has no office, and is not qualified to do any intrastate business in this State.

It has often been observed in times past that interstate commerce should pay its way, should be made to bear a fair share of the cost of local government whose protection it enjoys, but outside of ad valorem taxes and until recently most efforts to make it pay its way have met with failure. In late years, however, there is a tendency to uphold local taxation when it does not bear directly upon interstate commerce as commerce, or when indirect, it has no substantial effect to block or impede the free flow of such commerce.

And more recently there has been a pronounced trend that, in order to make a more reasonable accommodation [fol. 35] between local needs and the dominant requirement of freedom in the national commerce, recognition shall be given to a rule as follows: That although a particular activity may be essential to the continued full and unimpeded flow of commerce between the states as regards a particular commodity or other matter of such commerce, yet if that activity is of a substantial character, and is one which actually and distinctly happens in the particular State and must be, and is, protected by that State regardless of the ultimate purpose of the activity, then for the purpose of laying a tax as a recompense for the local protection afforded, the State may detach the activity so long as the exaction on account of it is not made a pretext to impose a burden which would have the effect, beyond that which is remote or unsubstantial, to interfere with the national interests.

The present case may be reduced, therefore, to two questions: (1) Are the incidental local activities carried on by appellee corporation in this State substantial in nature and extent,—the active maintenance, supervision and repair in this state of 135 miles of pipe line and its related equipment? An affirmative answer to that question is obvious. (2) Does the franchise tax here demanded amount to enough to have any substantial effect to block or impede the free flow of commerce, or is it at all out of reasonable proportion to the services and protection which must be

furnished by the State in and about the stated local activities? The franchise tax demanded is approximately $3,400 per annum, whereas the ad valorem taxes are approximately $82,000 a year, whence the obvious answer to this last question must be in the negative.

Reversed and judgment here for appellant.

[File endorsement omitted.]

[fol. 36] IN THE SUPREME COURT OF MISSISSIPPI

36329

A. H. STONE, Chairman,

vs.

MEMPHIS NATURAL GAS COMPANY

JUDGMENT—February 24, 1947

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Hinds County and this court having sufficiently examined and considered the same and being of the opinion that there is error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 8th day of July 1946, be and the same is hereby reversed and this court now, here, proceeding to render and enter the judgment that should have been entered in the court below doth order and adjudge that the appellant, A. H. Stone, Chairman of the State Tax Commission do have and recover of and from the appellee, Memphis Natural Gas Company, for Franchise Tax for the year 1942, in the sum of $3,432.00, for the year 1943 in the sum of $3,466.50, and for the year 1944 in the sum of $3,415.50, with statutory interest at the rate of 12 per centum per annum from the respective due dates and all of the costs of this court and in the court below to be taxed, etc.

[fol. 37] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

[Title omitted]

MOTION OF THE PETITIONER FOR AN ORDER STAYING THE MANDATE OF THE SUPREME COURT OF MISSISSIPPI—Filed March 29, 1947

To: Honorable Sidney Smith, Chief Justice of the Supreme Court of Mississippi.

Your petitioner, Memphis Natural Gas Company, a Delaware Corporation, respectfully presents this, its application for an order staying the issuance of the mandate of the Supreme Court of Mississippi, under the provisions of Section 8 (d) of the Act of Congress of February 13, 1925, (U. S. Code, Title 28, Section 350) and assigns the following grounds therefor.

The nature of this cause is such that the State of Mississippi, through its Tax Commission, has demanded of petitioner the payment of a corporation franchise tax imposed under Sections 9312-9340 of the Mississippi Code 1942, for the years 1942, 1943, and 1944, and said Tax Commission entered its order adjudging petitioner liable therefor, from which order petitioner, under Section 9328, appealed to the Circuit Court of the First Judicial District, Hinds County, Mississippi, and which Court reversed the order of the Tax Commission. The State Tax Commissioner appealed from the order and judgment of the Circuit Court of Hinds County, as aforesaid, to the Supreme Court of Mississippi.

The Supreme Court of Mississippi, on February 24, 1947, reversed the order of the Circuit Court of Hinds County, Mississippi, First Judicial District, and proceeded to render and enter a judgment in this cause and adjudged that the [fol. 38] Appellant, A. H. Stone, Chairman of the State Tax Commission, have and recover from the Appellee, Memphis Natural Gas Company, for franchise tax for the year 1942 the sum of $3,432.00, for the year 1943 the sum of $3,466.50, and for the year 1944 the sum of $3,115.50 with statutory interest at the rate of 12 per centum per annum from the respective due dates, together with all costs of this Court

and in the Court below, and said judgment was and is now recorded on the Docket of this Honorable Court.

Petitioner contends that said order and judgment is contrary to the laws and constitution of the United States in that it imposes an undue burden on interstate commerce by reason of the fact that petitioner is engaged wholly in interstate commerce and does no intrastate business within the State of Mississippi, and said tax imposed violates the Commerce Clause, Article I, Section 8 of the Constitution of the United States; The Due Process Clause, Article XIV, Section 1 of the Ammendments to the Constitution of the United States; The Equal Protection Clause, Article XIV, Section 1 of the Ammendments to the Constitution of the United States.

And your petitioner further represents and he relies upon the following:

1. The Supreme Court of the State of Mississippi has decided a federal question of substance in a way probably not in accord with applicable decisions of the Supreme Court of the United States.

2. The Supreme Court of the State of Mississippi has decided an important question of local law in a way which is in conflict with applicable decisions of the Supreme Court of the United States, and has decided an important question of general law in a way probably untenable or in conflict with the great weight [fol. 39] of authority and has decided an important question of federal law and a federal question in a way probably in conflict with applicable decisions of the United States Supreme Court and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision by the Supreme Court of the United States.

3. In order to permit and enable petitioner to apply for and obtain a writ of Certiorari. The judgment in Cause No. 36,329, of the Supreme Court of Mississippi is a final judgment, is subject to a review by certiorari from the United States Supreme Court, and the execution and enforcement of such judgment should be stayed for a reasonable length of time to enable petitioner, as the ag-rieved party, to apply for and obtain a Writ of Certiorari from said Supreme Court of the United

States. Petitioner shows the court that it will require a period of at least 45 days to apply for a certiorari and have printed and certified a transcript of the record from the Clerk of this Court and to prepare and file the required printed copies of petition and brief and apply for said Writ of Certiorari.

Wherefore petitioner respectfully submits and moves this Honorable Court to grant its order staying the execution of the mandate as aforesaid.

Respectfully submitted, —— ——, Jr., Of Counsel for Petitioner.

[fol. 40] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

[Title omitted]

ORDER STAYING THE EXECUTION OF JUDGMENT—Filed March 29, 1947

Petitioner in the above numbered and entitled cause, having made proper application for stay of mandate, execution, and enforcement of the judgment rendered in the above entitled cause, and the undersigned Chief Justice of the Supreme Court of Mississippi having duly considered the same and having been fully advised at the premises, it is hereby ordered that the mandate execution, and enforcement of the final judgment rendered against petitioner and in favor of A. H. Stone, Chairman of the State Tax Commission in complaint No. 36,329, on the Docket of the Supreme Court of Mississippi, be, and the same are ordered stayed for a period of 90 days in order to enable petitioner to apply for a writ of Certiorari from the Supreme Court of the United States, but the surety bond, which is usually required in such cases, making petitioner answerable for all damages and costs which the State Tax Commissioner might sustain by reason of this stay, is hereby waived and said petitioner is not required to execute any bond as a precedent for this order staying the execution of the judgment herein. It is therefore ordered and adjudged that the mandate, execution, and enforcement of the final judg-

ment rendered against petitioner in favor of A. H. Stone, Chairman of the State Tax Commission, is hereby stayed for a period of 90 days to enable petitioner to apply for a Writ [fol. 41] of Certiorari from the Supreme Court of the United States; and it is further ordered that this Stay Order shall be filed with the Clerk of the Supreme Court of Mississippi, who shall be bound accordingly.

Witness my signature this the 29th day of March, 1947.

Sydney Smith, Chief Justice of the Supreme Court of Mississippi.

[fol. 42] Clerk's Certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 16, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of Mississippi is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.